

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

400J0354

SENATE BILL NO. 37

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide for the filing and usage of certain property
2 casualty rates and to exempt certain size risks from rate and form approval.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For the purposes of this Act, the term, exempt commercial policyholder, means
5 any person who applies for or procures any kind of property casualty insurance, except title or
6 workers' compensation insurance, through the use of a risk manager employed or retained by
7 such person, and meets at least two of the following qualifications:

- 8 (1) Has purchased the insurance with aggregate premiums in the sum of at least one
9 hundred thousand dollars during the most recently completed calendar year;
- 10 (2) Has a net worth of at least ten million dollars as reported in the policyholder's most
11 recently issued financial statement, reviewed or audited by an independent certified
12 public accountant;
- 13 (3) Has annual net revenues or net sales of at least ten million dollars as reported in the
14 policyholder's most recently issued financial statement, reviewed or audited by an
15 independent certified public accountant;



(4) Employs at least one hundred full-time employees, either individually or, if the policyholder is a member of an affiliated group, collectively with all members of the affiliated group;

(5) Has, if the policyholder is a nonprofit organization, an annual operating budget of at least two million five hundred thousand dollars for the most recently completed calendar or fiscal year, whichever applies;

(6) Has, if the policyholder is a public entity, an operating budget of at least ten million dollars for the most recently completed calendar or fiscal year, whichever applies; or

(7) Has, if the policyholder is a municipality, a population of at least twenty thousand.

Section 2. For the purposes of this Act, the term, risk manager, means an employee of the exempt commercial policyholder, or a third-party consultant retained by the policyholder who provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and the purchase of insurance, and who possesses at least one of the following credentials:

(1) A bachelor's or higher degree in risk management issued by an accredited college or university;

(2) A designation as a chartered property and casualty underwriter issued by the American Institute for Chartered Property and Casualty Underwriters and Insurance Institute of America;

(3) A designation as an associate in risk management issued by the American Institute for Chartered Property and Casualty Underwriters and Insurance Institute of America;

(4) A designation as a certified risk manager issued by the National Alliance for Insurance Education and Research;

- 1 (5) A designation as a fellow in risk management or RIMS fellow issued by the Global
2 Risk Management Institute; or
- 3 (6) At least seven years of experience in one or more of the following areas of
4 commercial property and casualty insurance:
- 5 (a) Risk financing;
- 6 (b) Claims administration;
- 7 (c) Loss prevention; or
- 8 (d) Risk and insurance coverage analysis.

9 Section 3. That chapter 58-24 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 An insurer issuing a policy to an exempt commercial policyholder is exempt, except as
12 provided for in this Act, from the rate filing requirements of chapter 58-24 and the form filing
13 requirements of § 58-11-12. At the time of soliciting an exempt commercial policyholder to
14 purchase insurance, the insurance producer, or the insurer in the case of a direct procurement
15 from the insurer, shall disclose to the policyholder and the policyholder's risk manager, on a
16 form created by the insurer, that a premium or rate may be quoted or a policy form may be used
17 that is not subject to the rate and form filing requirements of the Division of Insurance.

18 Section 4. That chapter 58-24 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If a third-party consultant is retained by the exempt commercial policyholder to act as the
21 policyholder's risk manager when a quote for insurance is delivered to the policyholder, the
22 consultant shall disclose, in writing, the existence of any commission, fee, or contingency
23 arrangement the third-party consultant has with the insurer.

24 Section 5. That chapter 58-24 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 If a policy or binder of insurance is first delivered to an exempt commercial policyholder,
3 the insurance producer, or the insurer in the case of a direct procurement from the insurer, shall
4 obtain from the policyholder a written certification on a form created by the insurer, dated and
5 signed by a senior officer or senior manager of the policyholder, and the policyholder's risk
6 manager, containing the following information and making the following certifications:

- 7 (1) The name of the insured;
- 8 (2) The name of the insurer;
- 9 (3) The name of the insurance producer who sold the policy or policies;
- 10 (4) The policy number or numbers;
- 11 (5) A brief description of the policy or policies of insurance sold;
- 12 (6) List any requirement as set forth in section 1 of this Act that the policyholder meets
13 in qualifying as an exempt commercial policyholder; and
- 14 (7) Certification that the policyholder qualifies as an exempt commercial policyholder.

15 Section 6. That chapter 58-24 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 On any policy of insurance sold to an exempt commercial policyholder, the insurer shall
18 conspicuously place on the declaration page of the policy, and if a binder is issued, on the face
19 of the binder, the following disclosure in prominent, bold-faced type:

20 THE RATES, RATING PLANS, RESULTING PREMIUMS, AND THE POLICY
21 FORMS FOR THIS POLICY ARE EXEMPT FROM THE FILING
22 REQUIREMENTS UNDER SOUTH DAKOTA INSURANCE LAW.

23 Section 7. That chapter 58-24 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The insurer shall maintain copies of the disclosures required by this Act. The copies are
2 subject to examination. The insurer shall provide the copies to the division upon request as
3 provided by this title.

4 Section 8. That chapter 58-24 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any insurer who sells any kind of insurance to an exempt commercial policyholder shall
7 maintain records relating to the insurance sales as required by this Act. At a minimum, the
8 records shall include: any data, statistics, rates, rating plans, rating systems, and underwriting
9 rules used in underwriting and issuing such policies; claims-made policy forms; annual
10 experience data on each risk insured, including written premiums, written premiums at a manual
11 rate, paid losses, outstanding losses, loss adjustment expenses, underwriting expenses,
12 underwriting profits, and profits from contingencies; and complaint information required under
13 South Dakota law.

14 The insurer shall maintain the records for five years. The insurer shall make such records
15 available for examination by the director at any reasonable hour.

16 Section 9. That § 58-24-10 be amended to read as follows:

17 58-24-10. Every insurer shall file with the director of the Division of Insurance every
18 manual, minimum, class rate, rating schedule, or rating plan and every other rating rule, and
19 every modification of any of the foregoing which it proposes to use. Every such filing shall state
20 the proposed effective date thereof, and shall indicate the character and extent of the coverage
21 contemplated. The filing date is the effective date thereof unless the insurer proposes an
22 effective date subsequent to the filing date.

23 This section does not apply to:

24 (1) Inland marine risks which by general custom of the business are not written

1 according to manual rates or rating plans; or

2 (2) Automobile and other motor vehicle insurance subject to § 58-24-10.1.

3 Section 10. That § 58-24-11 be repealed.

4 ~~— 58-24-11. Under the rules as the director shall adopt, the director may, by written order,~~
5 ~~suspend or modify the requirement of filing as to any kind of insurance, subdivision, or~~
6 ~~combination thereof, or as to classes of risks, the rates for which cannot practicably be filed~~
7 ~~before they are used. Such orders or rules shall be made known to insurers and rating~~
8 ~~organizations affected thereby. The director may make such examination as he may deem~~
9 ~~advisable to ascertain whether any rates affected by such order meet the standards set forth in~~
10 ~~§ 58-24-6.~~